

No. 14/13/87-6 Lab, 123.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Hasangarh Co-op. Credit and Service Society Ltd., (Mini Bank), Hasangarh Rohtak *versus* Ashok Kumar.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 107 of 1991

between

SHRI ASHOK KUMAR C/O SHRI VIJENDER SINGH, HOODA, PRESIDENT, MINI BANK KARAMCHARI SANGH, HOUSE NO. 524/18, SAINI GALI, ARYA NAGAR, ROHTAK

.. Workman.

AND

M/S HASANGARH CO-OPERATIVE CREDIT AND SERVICE SOCIETY LTD., (MINI BANK), HASANGARH (ROHTAK) .. Management

Present :

Shri V. S. Singal, Authorised Representative for the workman.

Shri M. C. Bhardwaj, Authorised Representative for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department, Endorsement No. SOV/84-91/30775—80, dated the 14th August, 1991 :—

Whether the termination of services of Shri Ashok Kumar is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was in employment on the respondent/society with effect from 1st January, 1990 on pay of Rs. 625 P. M. but on 7th September, 1990 the management disallowed to him to work without giving any letter of termination of services. The management had no allegations and the workman was not given any retrenchment compensation as provided in Section 25-F of the I. D. Act and was not given any information, no enquiry was held and which is illegal and against the law. Hence this claim statement was filed.

3. The management had filed the written reply that the workman was appointed on 1st January, 1990 but there is no signature of Ram Chander and workman was appointed without any signatures of Ram Chander etc. It is written at page No. 37 of loan manual that any chowkidar can be appointed with the business of the management is less than of Rs. 5 lac but the management had the balanced amount of Rs. 2,55,681.80 paise on 31st March, 1989. For the appointment of any person it is necessary to give the information and the then Managing Committee passing the agenda and when it was known to the Managing Committee his services were brought to an end on 7th August, 1990. Hasangarh Co-operative has no office of its own and the said society is closed in its working since 1968. The society is suffering loss of Rs. 3 lac and hence there was no need of appointment of chowkidar.

4. Replication was not filed by the workman. On the pleading of the parties the following issue was framed :—

(1) As per terms of reference?

5. My finding on the above issue is as under :—

Issue No. 1 :

6. The workman has come into witness box as WW-1. The management has examined 3 MWs who are Raghbir Singh as MW-1, Kanwal Singh member of the society as MW-2 and MW-3 Sukhbir Singh and closed the evidence.

7. The only main question involved for decision of this case is whether the workman had done the work for about 240 days or more than 240 days of service in 12 calendar months or not. To prove it the learned Authorised Representative for the workman brought to my notice the statement of workman as WW-1 wherein he stated that he was appointed as chowkidar on 1st January, 1990 and on 7th September, 1990 his services were terminated without giving him any notice or paying him notice pay or retrenchment compensation or give the charges. The workman has not been cross-examined by the management that his services were brought to an end on 7th August, 1990 and not on 7th September, 1990. The only suggestion made to the workman is that the office of the society is the Hasangarh and President used to meet him in the office. He denied the suggestion that there is no office of the society.

8. The management has examined Shri Raghbir Singh President of the Society and he made the statement that when the applicant was appointed, then business of the society was of Rs. 2/2½ lacs and when he was appointed he was never present and he was not informed. Raghbir Singh also made the statement that applicant was appointed on 28th December, 1989 and was removed from the job on 7th August, 1990 and the Inspector of Societies had objected on the appointment of the workman as the society had no income and therefore, the appointment of the workman is not according to facts and law. He admitted that Ram Chander was the Secretary and he had not brought the file of business conducted by the society.

9. MW-2 is Kanwal Singh a member of the society and he made the statement that the appointment of the applicant took place on the resolution passed by the society but he had not participated in the resolution meeting.

10. MW-3 Sukhbir Singh made the statement that there is over writing on the date mentioned in Ex. M-3 the photo copy of the resolution adopted by the respondent society. He also admitted that proceedings written on the Ex. M-3 are in the different ink and the signatures are in the different ink. He also admitted that date mentioned under the signatures are of the one ink and he also admitted that he was the then Secretary and the date written under the signatures is that of 7th September, 1990. He also admitted that he had not brought the original of the documents Ex. M-4 to M-7 which are the photostat copies and he also admitted that the post of chowkidar is still vacant. He also admitted that as Secretary was removed on 7th September, 1990 he was then not the Secretary.

11. The submission made by the learned Authorised Representative of the workman is that when there is no cross-examination of the workman on the material point, it is to be presumed that whatsoever he made statement in examination-in-chief is to be believed as true. For the said contention the reference was made to 1987 (2) RLR, 450 wherein it was held that failure to cross-examine a witness on a material particular. It may amount to acceptance of his statement on the point. When the workman is making statement that he had worked for more than 240 days in 12 calendar months, and there is no cross-examination on the statement and no suggestion to him that he had not served for more than 240 days service in year, it is to be presumed to be proved that he had served for more than 240 days in year.

12. The next submission made by the learned Authorised Representative of the workman/applicant is that when the respondent is taking contradictory pleas in the written statement, how it can be said to be proved that the workman has served for less than 240 days of service in a year. When respondent is making contradictory pleas in the written statement and that is stated in para No. 1 of the written statement that the writing work of the resolution was given to the Secretary Ram Chander Ram Chander had not signed and then making the plea in the written statement that the working of the society is closed since 1968 and then taking the plea in written statement that the committee had conducted the business of Rs. 2,55,681.80 paise by 31st March, 1989. If the respondent society was closed in the year, 1968 then how the society had done the work and earned Rs. 2,55,681.80 paise by 31st March, 1989 and how the society had worked in the said Bank upto 7th August, 1990 and showing that he was removed from the jcb on 31st March, 1989. It is proved that Bank had been working all these years and it is incorrect plea of the respondent society that it was closed right from 1968.

13. The reference was made to Ex. M-3 which is signed by Secretary on the date of 7th September, 1990 whereas other members of the society had signed on 7th August, 1990. Dates mentioned are in one hand and by one pen and it is so proved from the statement of MW-3 Sukhbir Singh. The question is whether the secretary as he is signing the said resolution but in written statement specifically has mentioned that Secretary has not signed the resolution as he was not there the secretary of the Bank. After all a person might be working as secretary in the said Bank. If Ram Chander was not the secretary then might be some one else to do the work of secretaryship but it is not given in the written statement in the evidence as to whose the person was doing the work of secretary. However, when

Raghbir Singh President of the society is making admission that Ram Chander was the Secretary and he does not know is to when on which paper he used to get them signed. It is as such proved that Ex. M-3 was written on 7th September, 1990 though dates of under the signatures of all other members were put is on 7th August, 1990 to give in different colour.

14. The submission of learned Authorised Representative for the workman is that Ex. M-4 to M-7 or not proved to be copies of original documents as the original of the said documents were not brought with official and it can not be said to be proved. Though said documents when exhibited were not objected by the learned Authorised Representative for the workman but these documents were not admissible in evidence, the said documents are to be put into evidence not as exhibits as mentioned and for submission the reference was placed on Government of Andhra Pradesh and others *Versus* Karri Chinna Venkata Reddy and others, cited in A. J. R. 1994 (SC) 591, where it had that admission by way of photostat copies. Objection as to tempering of record and fictitious date of document not raised and hence not considered by High Court. The Hon'ble Supreme Court had held that copies should have been accepted in evidence, after examining original records.

15. In view of the said authority of the Apex Court I find that said documents has been wrongly exhibited and if documents are not exhibited there is no evidence by the management to prove that the workman had served upto 2th August, 1990 and not upto 7th September, 1990.

16. The learned Authorised Representative of for the management has made submission that the Inspector of Coop. Societies had inspected and found that the society were running in loss and not earning as much amount, so as to appoint a chowkidar. As the appointment of chowkidar was made without any substance and therefore, his services were brought to an end. When the appointment of the workman was made, it was not given in writing that the appointment of workman/applicant shall be subject to approval from the above and if the Inspector objects to his appointment his objection has no value in the eyes of law. I do agree with the submission and I am of the view that contention made by the learned Authorised Representative for the management that as the Inspector had not approved the appointment of applicant, therefore, his services were brought to an end is not valid.

17. Now the submission was made by the learned Authorised Representative for the workman is that the appointment was required to take the permission before retrenching the workman which the learned Authorised Representative for the management has denied the contention having any force of law. It was held in reference between Ollur Regional Imitation Diamond Manufacturers Industrial Coop. Society Ltd., and Labour Court and Another, cited in 1993 II LLJ, 174, holding that the three conditions mentioned in Section 25-F of the I. D. Act, 1947 are mandatory and cumulative. cannot be said that issuance of notice to the appropriate Government is only for statistical purpose and the failure to comply with it will not vitiate the action taken by the employer. I have gone through the judgement and it is clearly laid down that any industry if retrenching any employee, it has to comply with these conditions. First condition is worker should be given one month's notice in writing indicating the reason for retrenchment. Second condition is that at the time of retrenchment shall be paid equipment to 15 days average pay for every completed year of continuous service or any part thereof. 3rd condition is that notice in prescribed manner should be served on the appropriate Government.

18. When the retrenchment of the applicant had not taken plea as required under Section 25-F of the I. D. Act, whether the management had given any notice to the Government or not is not very much because the management has not complied with first and second condition of Section 25-F.

19. For the said reason I am of the view that as the workman has completed more than 240 days of service in 12 calendar months and he has been retrenched but not within accordance of Section of Section 25-F of the I. D. Act, hence the said retrenchment order is illegal null-and void and is set aside. In order that the workman is entitled to the job from the date of 6th September, 1990 but with 50 (Fifty)% of back wages. The reference is answered and returned accordingly. However, the parties are left to bear their own costs.

The 4th January, 1995.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. reference 107-91/43, dated the 13th January, 1995.
Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.